



House of Representatives

General Assembly

File No. 250

January Session, 2001

Substitute House Bill No. 6897

House of Representatives, April 11, 2001

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING APPEAL OF SITE PLAN REVIEWS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (b) of section 8-8 of the general statutes is
2 repealed and the following is substituted in lieu thereof:

3 (b) [Except] Notwithstanding the provisions of any special act or
4 municipal ordinance or regulation and except as provided in
5 subsections (c), (d) and (q) of this section and sections 7-147 and 7-147i,
6 any person aggrieved by any decision of a board, including a decision
7 to approve or deny a site plan pursuant to subsection (g) of section 8-3,
8 may take an appeal to the superior court for the judicial district in
9 which the municipality is located. The appeal shall be commenced by
10 service of process in accordance with subsections (e) and (f) of this
11 section within fifteen days from the date that notice of the decision was
12 published as required by the general statutes. The appeal shall be
13 returned to court in the same manner and within the same period of
14 time as prescribed for civil actions brought to that court.

15 Sec. 2. (a) Any appeal of a decision of a zoning commission,
16 planning and zoning commission or other agency exercising zoning
17 authority to approve or deny a site plan in which a final judgment has
18 not been entered prior to the effective date of this act, otherwise valid
19 except that the party taking such appeal failed to exhaust available
20 administrative remedies by appealing such decision initially to a
21 zoning board of appeals, is validated.

22 (b) If any appeal of a decision of a zoning commission, planning and
23 zoning commission or other agency exercising zoning authority to
24 approve or deny a site plan taken on or after June 21, 1998, and prior to
25 the effective date of this act has failed to be tried on its merits because
26 the appeal has been dismissed by the Superior Court for want of
27 jurisdiction due to the failure of the party taking such appeal to
28 exhaust available administrative remedies by appealing such decision
29 initially to a zoning board of appeals, the party taking such appeal
30 may, within sixty days after the effective date of this act, petition the
31 court to reopen such appeal. Notwithstanding the provisions of section
32 52-212a of the general statutes, such party shall have the right to have
33 such appeal reopened unless the court finds that (1) there has been a
34 substantial infringement of property rights, or (2) the judgment of the
35 Superior Court has been appealed and a final judgment has been
36 rendered on that appeal.

37 Sec. 3. This act shall take effect from its passage.

JUD JOINT FAVORABLE SUBST.

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: None

Affected Agencies: Judicial Department

Municipal Impact: Indeterminate

Explanation**State and Municipal Impact:**

The bill permits a person aggrieved by a zoning board's denial of a site plan to appeal the decision directly to the superior court. In addition, it allows for the reopening of any superior court cases dismissed since June 21, 1998 due to a party's failure to appeal a zoning board's decision directly to the zoning board of appeals.

State wide, few appeals are made regarding site plan denials. Of the many hundreds of site plans reviewed each year, it is estimated that less than ten decisions are appealed. It is unknown if granting permission to appeal directly to the superior court would result in a greater number of appeals. However, it is expected that any increase or decrease attributable to the bill would be negligible. The bill's provision that allows for the reopening of cases is unlikely to have a fiscal impact. Few or none of the approximate 20 cases filed since June 21, 1998 have been dismissed on the grounds that a party failed to appeal initially to the zoning board of appeals. The potential change in workload can be absorbed by the Judicial Department within existing

resources.

OLR Bill Analysis

sHB 6897

AN ACT CONCERNING APPEAL OF SITE PLAN REVIEWS.**SUMMARY:**

This bill permits people aggrieved by a town zoning decision, including site plan approvals and denials, to challenge these decisions directly in Superior Court, bypassing special acts and city ordinances and regulations, including zoning board appeals procedures. It overrules a Connecticut Appellate Court decision affirming the dismissal of a site plan appeal in which the aggrieved property owner had not first exhausted an available administrative appeals process (*Borden v. Planning and Zoning Commission*, 58 Conn. App. 399, cert. den. 254 Conn. 921 (2000)).

The bill validates site plan appeals on court dockets on its date of passage in which failure to exhaust is the only jurisdictional flaw. And it permits those whose appeals were dismissed on or after June 21, 1998 (the date of the trial court's dismissal in *Borden*) for failure to exhaust to file court petitions to re-open those cases. They must file within 60 days of the bill's passage and a court must re-open the appeal unless it finds that (1) there has been a substantial infringement of property rights or (2) the petitioning party appealed the case dismissal and a final judgment has been entered on that appeal. (The latter restriction appears to bar reopening the *Borden* appeal itself.)

EFFECTIVE DATE: Upon passage

SUBSTANTIAL INFRINGEMENT OF PROPERTY RIGHTS

Courts have interpreted the term "substantial infringement of property rights" in similar situations as requiring judges to determine on a case-by-case basis the extent to which a party expended a significant sum of money reasonably relying on the validity of a court decision that the legislature subsequently overrules.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 34 Nay 1